

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1274 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIRIT PADMANBH VYAS

Versus

STATE OF GUJARAT

Appearance:

PARTY-IN-PERSON for Petitioner
Mr. N.D.Gohil, ADDL. PUBLIC PROSECUTOR for
respondent no.1.
Party-in-person for respondent no. 2.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 13/10/97

ORAL JUDGEMENT

Petitioner Kirit Padmanabh Vyas, is the original accused in criminal case no. 5040 of 1994 on the file of the learned Chief Judicial Magistrate, Vadodara for the offences under sections 404, 406, 409, 416, 418, 419, 420, 463, 464, 465, 468, and 467 of IPC. The second respondent herein is the original complainant, who lodged the aforesaid complaint alleging that the accused-petitioner had represented as Director of a well known British company which was in fact not in existence and that although the accused was not the Director of Baroda Alloy Casting Limited, Baroda had given share

transfer as Director of the company. The complainant also alleged that he had given certain share certificates to the accused for raising finance to the company and the accused sold away those share certificates and misappropriated the amount for his own personal use. It appears that the investigation was carried out on the basis of the complaint lodged against the accused person and the charge-sheet came to be lodged in the Court of the learned Chief Judicial Magistrate, Baroda on December 30, 1994.

2. By the present petition, the petitioner-original accused has sought the proceedings of the aforesaid criminal case to be quashed in view of the settlement arrived at between the petitioner and the second respondent. A detailed memo of understanding has been arrived at between the parties on 10th September, 1995 at Vadodara wherein the petitioner and the second respondent have resolved their disputes and differences in respect of the aforesaid complaint. The petitioner had therefore, submitted the application under section 239 of the Code of Criminal Procedure for discharging him in respect of the aforesaid offences with which he has been charged. The said application under section 239 of the Code of Criminal Procedure was presented by the petitioner-accused on 25th August, 1995. It is the grievance of the petitioner that the said application for discharge has not been heard and disposed of since its submission and considerable period has elapsed and that he has to attend the Court of the learned Chief Judicial Magistrate at Vadodara. The petitioner has been residing at Bhavnagar and he has to travel about 300 kms. and incur expenses and to undergo hardship and inconvenience in attending the Court at Baroda on each day of hearing of the case and yet the application for discharge has not been heard nor disposed of since 1995. It appears that on 3rd September, 1997 the petitioner could not attend the Court on account of circumstances beyond his control and unfortunately his advocate also could not remain present when the case against the accused persons was called out in the Court of the learned Chief Judicial Magistrate, Baroda and on account of absence of the petitioner-accused, non-bailable warrant was ordered to issue. The petitioner had to rush from Bhavnagar to Baroda and got non-bailable warrant cancelled on furnishing security of Rs.5000/- and personal bond of the same pursuant to the orders dated 8th September, 1995 passed by the learned Chief Judicial Magistrate, Baroda. In the facts and circumstances of the case, the petitioner who is appearing as party in person submitted that the case has since been settled and compromised

between the petitioner and the second respondent and that there is no material so as to constitute the offences of the complaint against the petitioner prima facie. He has therefore, prayed for quashing of the criminal complaint and the proceedings thereunder amongst other reliefs. Mr. R.S.Upadhyaya, Constituted Power of Attorney holder of the second respondent has categorically stated before this Court that the parties have settled the matter and nothing further requires to be done in the complaint lodged against the petitioner.

3. The record and proceedings are called for and I have perused the relevant record. From the memo of understanding arrived at between the parties, it is disclosed that the parties have settled the disputes touching the subject matter of the present complaint and in that view of the matter, the complaint if proceeded with, shall not yield any positive result and it would be nothing but abuse of process of law. Mr. N.D.Gohil, learned APP has also submitted that there is no possibility of adducing any evidence in support of allegations of the offences with which the petitioner has been charged.

4. In the above premises, the petition succeeds and is allowed. Criminal case No. 5040 of 1994 pending in the Court of the learned Chief Judicial Magistrate at Baroda and the proceedings thereunder are ordered to be quashed and set aside. The allegations in regard to the aforesaid offences against the petitioner-accused have been rendered groundless in view of the further development of compromise and the memo of understanding between the parties as is on record, have now become groundless entitling the accused to be discharged in respect of the aforesaid offences. The accused is thus discharged as the complaint having been quashed. The bail bonds stand cancelled. Rule is accordingly made absolute.

(D.G.Karia,J)

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